

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL ARCHER,

Petitioner,

v.

**Civil No. 2:04-CV-244
Criminal No. 2:99-CR-035
Judge Smith
Magistrate Judge King**

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

This case is before this Court pursuant to remand from the United States Court of Appeals for the Sixth Circuit. For the reasons that follow, petitioner's motion for relief from the May 17, 2005, final judgment dismissing petitioner's 2255 petition without objections is **GRANTED**, and that judgment is **VACATED**. Petitioner's objections, however, are **OVERRULED**, and this action is hereby **DISMISSED**.

On April 20, 2005, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. §2255 be dismissed. Doc. No. 89. No objections were filed and, on May 17, 2005, final judgment was entered dismissing this action. Doc. No. 90. Petitioner thereafter filed motions for relief from final judgment, representing that his counsel had thought that objections had in fact been filed. *See* Doc. Nos. 94, 95. Petitioner's 60(b) motions were denied, as was his motion for reconsideration on the basis that, because petitioner had by that time filed a notice of appeal, the Court was without jurisdiction to grant petitioner's requests. *See* Doc. Nos. 97, 99. However, the Court also indicated

that it would be willing to grant petitioner's requests, should the United States Court of Appeals for the Sixth Circuit remand the case for consideration of petitioner's motions. *See id.* On November 18, 2005, the United States Court of Appeals for the Sixth Circuit in fact remanded the case for this Court's consideration of petitioner's motion for relief from final judgment dismissing this action without objections. *See* Doc. No. 100.

Therefore, for the reasons previously discussed, *see Opinion and Order*, July 18, 2005, Doc. No. 97, petitioner's motion for relief from the May 17, 2005, final judgment dismissing petitioner's §2255 petition without consideration of his objections is **GRANTED**. The final judgment entered May 17, 2005, is **VACATED**.

That said, pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. Petitioner objects to all of the Magistrate Judge's conclusions, and to all of the Magistrate Judge's recommendations. Petitioner again raises all of the same arguments that were previously presented. For the reasons discussed at length in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This case is hereby **DISMISSED**. Should petitioner file a new notice of appeal, this Court will again consider petitioner's request for a certificate of appealability.

IT IS SO ORDERED.

s/George C. Smith
GEORGE C. SMITH
United States District Judge